

van LENGERICH - Serial No. 09/233,443
AMENDMENT AFTER FINAL REJECTION
Attorney Docket: BVL-105

REMARKS

Claims 21-22, 26, 29, 47-52, 66-67, 96-97, 99, 101-103, and 108-111 are pending. By this Amendment, withdrawn Claims 53, 55, 98, 100, 104-107, 113, and 115 are canceled, without prejudice or disclaimer, and Claims 21, 99, and 101-103 are amended. No new matter is added.

Applicants thank Examiner Webman for indicating that the subject matter of Claims 99 and 101-102 is allowable.

Applicants further thank Examiner Webman for the courtesies extended to their representative during the July 25, 2006 telephone conference in which the above amendments to Claims 21, 99, 101 and 102-103 were discussed and given approval to place the application in condition for allowance. The amendment to Claim 103 eliminates duplicative language and reduces the issues.

I. REJECTION UNDER 35 U.S.C. 103(a)

Claims 21-22, 26, 29, 47-52, 66-67, 96-97, 103, and 108-111 were rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,074,902 (Connick, Jr. et al.) in view of U.S. Patent No. 5,320,669 (Lim et al). This rejection is respectfully traversed.

Connick, Jr. et al. discloses a weed pathogenic fungi that is encapsulated in a wheat gluten matrix. The encapsulated fungi grow onto the surface of the formed products when provided with sufficient light and water (Abstract). Connick, Jr. et al. does not teach or suggest an encapsulated product comprising a hydrophobic agent for controlling the rate of release of the encapsulant. The claimed hydrophobic agent helps delay penetration of water or gastric juices into the plasticized matrix (specification at page 15, lines 15-18). In contrast, the objective in Connick, Jr. et al. is to expose the fungi to water and light so that they will grow.

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Lim et al. does not overcome the deficiencies of Connick, Jr. et al. Lim et al. discloses a water-resistant biodegradable thermoplastic composition made of a cereal grain and may contain 2 wt.% or less of lubricant additives (col. 1, lines 39-46, col. 2, lines 41-50, and col. 6, lines 7-26). Water-lubricant additives include additives such as oil that increase the water resistance of the composition (col. 6, lines 13-20). A fungicide may be included to prevent growth of fungi. See col. 6, lines 43-50.

The references are not properly combinable, and if they were, Applicant's claimed invention would not be obtained. Lim et al. has nothing to do with encapsulation of fungi or biological control of weeds. In fact, Lim et al. discloses the use of fungicides (col. 6, lines 43-50) which is contrary to Connick, Jr. et al.'s objective of active fungi for killing weeds (Abstract, col. 1, line 63 - col. 2, line 7).

In addition, Connick, Jr. et al. require water penetration for encapsulated fungi to grow onto the surface of the product. There is no motivation in Connick, Jr. et al. to seek the teachings of Lim et al. to include an oil to increase water resistance. In fact, Lim et al. is concerned with the production of moldable thermoplastics and extracts a major portion of the thermally-unstable lipids from a cereal grain with an organic solvent. See col. 2, line 63 - col. 3, line 8; col. 3, line 61 - col. 4, line 8; and col. 4, lines 41-54. Lim et al. discloses that a lubricant may be added in an amount less than about 2% by weight to provide a mold- or dye-lubricating effect when the composition is molded, by aiding the release of the molded article from the mold. See col. 6, lines 7-26. However, Connick, Jr. et al. is not concerned with a thermoplastic composition or its release from a mold.

The Examiner maintains that one skilled in the art would be motivated to add oil to the composition of Connick, Jr. et al. to maintain structural integrity in view of Lim et al. However, Connick, Jr. et al. does not indicate any need for additional structural integrity

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and Lim et al. increases structural integrity by solvent extraction of lipids and by cross-linking. See col. 3, lines 16-24 and col. 5, lines 19-33.

There is no reason why one of ordinary skill in the art would seek to provide water resistance to the composition of Connick, Jr. The articles of Lim et al. without a cross-linking agent remain intact for about 1-3 days and articles with a cross-linking agent remain intact for 5-7 days (col. 9, lines 34-38). In contrast, the granules of Connick, Jr. allow for the pathogenic fungi to grow, infect, and kill weeds within 7 days. See Table 1 and Examples. The fact that Connick, Jr. teaches applying granules to aquatic environments for the biological control of weeds (col. 2, lines 25-28) and the addition of a low density material to allow flotation in water (col. 3, lines 55- col. 4, line 2) does not support using the oil of Lim et al. to provide water resistance to the granules of Connick, Jr., thereby unnecessarily increasing the time it takes to kill weeds.

Nevertheless, to advance prosecution, the amount of hydrophobic agent recited in Claim 101 is incorporated into independent Claim 21 and dependent Claim 99 is rewritten in independent form, thereby rendering the rejection moot. Reconsideration and withdrawal of the rejection are respectfully requested.

II. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

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Any fees should be charged to, or any overpayment in fees should be credited to,
Deposit Account No. 501032 (Docket #BVL-105).

Respectfully submitted,



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